

**BEFORE THE
DEPARTMENT OF RESOURCES, RECYCLING & RECOVERY
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF REVOCATION OF A PROBATIONARY
CERTIFICATION:**

Pinos Recycling – Maria de Lourdes Aguilar

Address: 6919 Stockton Boulevard, Sacramento Ca

Type of Entity: Revocation of Probationary Certificate

File No.: IH14-002-BCR

Certificate No.: RC142366.001

PRECEDENTIAL DECISION No.: 23-04

**Designation of decision as precedential under Government
Code Section 11425.60**

Pursuant to Government Code Section 11425.60, the Department of Resources, Recycling and Recovery hereby designates as precedential its decision, dated April 8, 2014, in the above-referenced action.

This decision is designated precedential effective September 10, 2023,
Sacramento, California.

Dated: September 10, 2023.

As approved by Rachel Machi Wagoner on September 10, 2023,
Department of Resources, Recycling & Recovery.

1 exact scope of this request, I do not find it necessary to take official notice when true
2 and correct copies of what was described by the Division as the full administrative
3 record supporting the revocation were submitted to me under sworn declaration.
4 Moreover, Respondents did not object to or challenge the admissibility or accuracy of
5 the administrative record as lodged by the Division. I am therefore denying this
6 request.

7 8 **IV. Findings of Fact**

9
10 Maria de Lourdes Aguilar is the owner of a recycling center that was operating
11 under probationary certificate number RC142366.001 as Pinos Recycling. Ms. Aguilar
12 is also the owner of five other recycling center locations that were operating under
13 non-probationary certificate numbers RC12870, RC12871, RC12873, RC12943, and
14 RC12974 as Pinos Recycling. The record indicates that all of the aforementioned
15 certificates share the same owner name, the same business name, and the same
16 phone number for all locations. Respondents do not dispute identical ownership and
17 indeed admit as much in their original hearing request.¹

18
19 The five non-probationary certificates were revoked effective December 17, 2013
20 as part of a final agency decision following a formal administrative hearing before an
21 Administrative Law Judge ("ALJ") with the Office of Administrative Hearings ("OAH").
22 The decision included a findings that Pinos Recycling had falsified consumer
23 transaction log sheets and submitted fraudulent recycling claims to the Division.
24 During the hearing, Ms. Aguilar admitted to "inventing" non-existent consumer
25 transactions on the log sheets to support California Redemption Value ("CRV")
26 payment claims. The ALJ thus found sufficient cause to revoke all five certificates
27 under PRC Section 14591.2.

28
29 The Division subsequently revoked probationary certificate RC142366.001. The
30 Division stated that PRC Section 14591.2(d) provided a legal basis to revoke
31 Respondents' probationary certificate under PRC Section 14541(b) based on the
32 findings and conclusions in the final agency decision following the OAH hearing.

33 34 **V. Analysis and Order**

35
36 According to PRC Section 14541(b):

37
38 "A probationary certificate issued pursuant to this section shall be issued
39 for a limited period of not more than two years. Before the end of the
40 probationary period, the department shall issue a nonprobationary
41 certificate, extend the probationary period for not more than one year, or,
42 after notice to the probationary certificate holder, *revoke the probationary*
43 *certificate.*" [emphasis added]

44
45
46
47 ¹ "...the department has previously made its finding based upon the conduct alleged relating to all other recycling
48 centers owned by my client's..." [sic] E-mail from John Gugliotta to Kris Chisholm dated January 26, 2014.

1 PRC Section 14591.2 states in relevant part:

2
3 “ ...

4 (b) All of the following are grounds for disciplinary action, in the form
5 determined by the department in accordance with subdivision (c):

6 ...

7 (2) The responsible party engaged in dishonesty, incompetence,
8 negligence, or *fraud* in performing the functions and duties of a
9 certificate holder or registrant.

10
11 (c) The department may take disciplinary action pursuant to this
12 section, by taking any one of, or any combination of, the following:

13
14 (1) *Immediate revocation* of the certificate or registration, or
15 revocation of a certificate or registration as of a specific date in
16 the future.

17 ...

18 (d) The department may do any of the following in taking disciplinary
19 action pursuant to this section:

20
21 (1) If a certificate holder or registrant holds certificates or is registered to
22 operate at more than one site or to operate in more than one capacity at
23 one location, such as an entity certified as both a processor and a
24 recycling center, the department may simultaneously revoke, suspend, or
25 impose conditions upon some, or all of, the certificates held by the
26 responsible party.

27
28 (2) If the responsible party is an officer, director, partner manager,
29 employee, or the owner of a controlling ownership interest of another
30 certificate holder or registrant, *that other operator's certificate or*
31 *registration may also be revoked*, suspended, or conditioned by the
32 department in the same proceeding, if the other certificate holder or
33 registrant is given notice of that proceeding, *or in a subsequent*
34 *proceeding.* [emphasis added]

35
36 Together, these two sections empower CalRecycle to revoke a probationary
37 certificate if a responsible party engages in fraud in performing the duties of a
38 certificate holder. In such cases, CalRecycle is authorized to revoke any and all
39 certificates under the control of a responsible party either simultaneously during the
40 same proceeding or at a subsequent proceeding.

41
42 This hearing is narrow in scope and limited to whether the administrative record
43 supports a determination that there was a prior adjudication finding that Respondents
44 engaged in fraud. If so, there are statutory grounds to revoke probationary certificate
45 RC142366.001 if the responsible party is the same as in the prior adjudication. The
46 Division has the burden of proof in this hearing under Evidence Code Section 500.

1 The Division has met its burden of proof by a preponderance of the evidence.
2 The record contains a final agency decision finding that Respondents engaged in fraud
3 in performing the duties of a certificate holder. Furthermore, the record amply supports
4 a finding that the certificate holders in the prior adjudication are the same as in the
5 present proceeding. Respondents have produced no evidence to rebut either point.
6

7 Respondents make several legal arguments that lack merit. First, they contend
8 that the Division has produced no evidence demonstrating fraudulent behavior at the
9 operating location under the probationary certificate. This argument is irrelevant
10 insofar as it disregards the pertinent statutory authority in this case. In enacting PRC
11 Section 14591.2(d), the Legislature determined that there need only be proof of
12 fraudulent behavior by a responsible party while performing the duties of a certificate
13 holder and that such behavior need not occur at each and every location under their
14 control to support a revocation at multiple sites. Essentially, the law treats all of the
15 locations under the control of a responsible party as a single operation for purposes of
16 revocation for fraud.
17

18 Respondents claim that because PRC Section 14591.2 states that CalRecycle
19 "may" take disciplinary action that the hearing officer has discretion as to whether to
20 revoke the probationary certificate. This argument suggests the hearing officer may
21 stand in the shoes of Division staff and exercise *de novo* enforcement discretion as to
22 whether to take disciplinary action at all. This reflects a misunderstanding of the role of
23 hearing officer. My delegation of authority from the Director is limited to hearing and
24 issuing decisions on the propriety of certification actions that have already been taken.
25 Furthermore, under 14 CCR Section 2130(c)(3), my function is restricted to
26 determining whether the existing disciplinary action of Division staff should be
27 "sustained" or "reversed" based on the evidence in the record. If a preponderance of
28 the evidence supports the action, I must sustain. That is the case here.
29

30 Finally, Respondents allege that they have caused no loss to the Beverage
31 Container Recycling Fund and that there is no risk in allowing the facility at issue to
32 continue operating. As neither of these arguments addresses any element of the
33 applicable statutory grounds for revocation, I find them irrelevant.
34

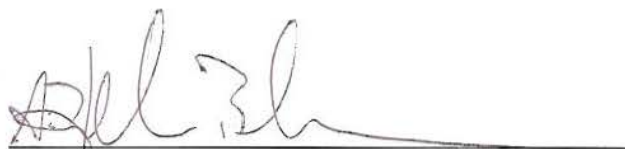
35 VI. Order

36
37 Based on the above factual and legal considerations, the revocation of
38 probationary certificate RC142366.001 is hereby sustained.
39

40 It is so ordered.

41 HEARING OFFICER

42
43
44 DATED: 4/8/2014

45 
46 Harlee Branch, Senior Staff Counsel
47
48



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

LEGAL OFFICE

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PROOF OF SERVICE

I, Donnet McFarlane, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to this action. My place of employment and business is as in the letterhead.

On April 8, 2014, I served Decision and Order in the Matter of Pinos Recycling, Case No.: IH14-002-BCR:

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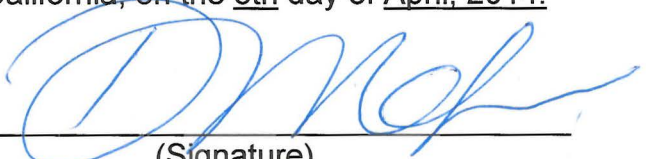
by:

First Class Mail In a sealed envelope, with postage thereon fully prepaid, via United States Postal Service.

Electronic Service Sent to the email addresses listed above.

FAX Sent to fax numbers listed above.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on the 8th day of April, 2014.



(Signature)